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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,982	03/01/2002	Kevin McCarthy	042933/302169	2223
826	7590	03/19/2009		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER CHENCINSKI, SIEGFRIED E	
			ART UNIT 3695	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/084,982

Applicant(s)

MCCARTHY, KEVIN

Examiner

SIEGFRIED E. CHENCINSKI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1-24 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Wiser et al (hereinafter **Wiser**, US 6,868,403 B1) in view of Sasaki et al. (US PreGrant Publication 2002/0077988 A1, hereafter **Sasaki**).

Re Claims 1, 10 & 18, **Wiser** discloses a method, product and apparatus comprising:

- opening a software application in a terminal (FIG 1; Client System “Web Browser.”)
- requesting downloadable content from the open software application (Column 16, lines 30-39)
- automatically starting up a network session (Column 16, lines 36-42)
- transmitting in said network session a request for downloading said downloadable content for the software application (Column 16, lines 42-47),
- downloading said downloadable content (Column 2, lines 13-21; Col. 3, ll. 60-65.);
- enabling a user of the wireless terminal to pre-study said downloaded received downloadable content (Column 2, lines 13-21; Col. 3, ll. 60-65. The enablement is implicit).
- effecting payment for the pre-studied downloaded downloadable content for the software application for enabling storing of the pre-studied downloadable content for the software application without further user interaction beyond selecting the pre-studied downloaded downloadable content for storage, wherein effecting the payment is enabled subsequent to an account verification (Col. 4, l. 15 – Col. 5, l.

20. Wiser teaches no further interaction beyond selecting the pre-studied downloadable content for storage since the payment arrangements have already been prearranged through the passport process for a given customer so that payment handling is automatically triggered upon the Re. payment after account verification, Wiser does this by first verifying the account and then effecting he payment – Fig. 6, the sequence 602 through 612), and

- storing of the pre-studied downloaded downloadable content for the software application from which the downloaded downloadable content for the software application was requested in response to effecting of the payment (Column 10, lines 2-17, partic. ll. 5 & 14).

Wiser does not explicitly disclose

- wherein the terminal is a wireless terminal.
- Opening a software application in a wireless terminal.

However, **Sasaki** discloses the use of a portable wireless device for receiving digital content (Abstract, ll. 2-4). This implies opening a software application in a wireless terminal. Further, Sasaki discloses permitting users who have not as yet purchased the digital content to play back the digital content a limited number of times (page 3, [0033], ll. 6-10, 14-17) as well as an unlimited number of times ([0033]-ll. 10-14. In either case, it is obvious in **Sasaki** that a pre-study enables a user to receive downloadable content in full quality and full length.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to combine the disclosure of Wiser with that of Sasaki in order to use a wireless application protocol to provide data from a remote server to a mobile station, motivated by a desire to provide a novel digital content distribution scheme that enables digital content owners to reach new potential customers by leveraging the desire of users to share and exchange digital content, while protecting the commercial interests of digital content owners. (Sasaki, p. 1, [0005]-ll. 1-5).

Re Claim 2: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the requested downloadable content includes at least a graphic icon (Column 2, line 15 "graphics.").

Re Claim 3: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the networks session is a WAP session (Fig. 1)

Re Claim 4: Wiser in view of Sasaki discloses the claimed method supra and Wiser discloses wherein the WAP session is established with a pre-identified content provider (Column 6, lines 17-38; FIG 1; Refs 128-122-112)

Re Claim 5: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the user of the wireless terminal has an account at the pre-identified content provider, and wherein the handling of payment for said downloadable content includes transfer of an amount from said account to the content provider upon approval by the user (Column 17 line 53-Column 18 line 6).

Re Claim 6: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the storing of said downloaded content is enabled once the user has approved said payment (Column 18, lines 7-20).

Re Claim 7: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the WAP session is established with a pre-identified Internet portal hosting at least one content provider (Column 6, lines 17-38; FIG 1; Refs 128-122-112)

Re Claim 8: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the user of the wireless terminal has an account at the pre-identified Internet portal, and wherein the handling of payment for said downloaded content includes transfer of an amount from said account to the content provider upon approval by the user (Column 17 line 53-Column 18 line 6).

Re Claim 9: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the storing of said downloaded content is enabled once the user has approved said payment (Column 6, lines 40-42).

Re Claims 11-14: Further wireless terminal claims would have been obvious from the previously rejected method claims 1-4 and 15, respectively, and are therefore rejected using the same art and rationale.

Re Claim 15: Wiser in view of Sasaki disclose the claimed method supra. Wiser in view of Sasaki does not explicitly disclose discarding the pre-studied downloaded content if the user does not select to store the pre-studied downloaded content. However, it would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention to have known that users of computer storage media often delete or discard stored material in which they have determined that they no longer care to keep that stored information. Such deletions make room for the storage of other information on that storage medium.

Re Claim 17, Wiser discloses a method, wherein automatically starting up the network session further comprises providing a plurality of available downloadable items for selection based on a status of an account of the user (Fig. 3 shows "available items", and the payment capability is checked and payment authorized – Col. 4, ll. 65-66)..

Re Claim 16, Wiser discloses a computer program product wherein an executable portion includes instructions for providing a plurality of available downloadable items for selection based on a status of an account of the user (Fig. 8; Col. 4, ll. 15-37, 58-59-a plurality of media being purchased.).

Re Claim 19: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the requested downloadable content includes at least a graphic icon (Column 2, line 15 "graphics.").

Re Claim 20: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the networks session is a WAP session (Fig. 1).

Re Claim 21: Wiser in view of Sasaki discloses the claimed method supra and Wiser discloses wherein the WAP session is established with a pre-identified content provider (Column 6, lines 17-38; FIG 1; Refs 128-122-112).

Re Claim 22: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the user of the wireless terminal has an account at the pre-identified content provider, and wherein the handling of payment for said downloaded

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content includes transfer of an amount from said account to the content provider upon approval by the user (Column 17 line 53-Column 18 line 6).

Re Claim 23: Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses wherein the storing of said downloaded content is enabled once the user has approved said payment (Column 18, lines 7-20).

Re Claim 24: neither Wiser nor Sasaki explicitly disclose the handling of the payment based on a pre-existing agreement associated with the wireless terminal directly with an account. However, Wiser in view of Sasaki discloses the claimed method supra and Wiser further discloses a pre-existing account arrangement which electronically recognizes the account (Col. 25, ll. 6-9, 31-32). Sasaki discloses transactions with wireless accounts (see claims 5 and 22) and also discloses pre-paid accounts. It would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention to have combined the disclosures and suggestions of the art of Wiser and Sasaki with what would have been obvious to the ordinary practitioner in order to handle the payment based on a pre-existing agreement associated with the wireless terminal directly with an account, motivated by a desire to provide a novel digital content distribution scheme that enables digital content owners to reach new potential customers by leveraging the desire of users to share and exchange digital content, while protecting the commercial interests of digital content owners. (Sasaki, p. 1, [0005]-ll. 1-5).

Response to Arguments

2. Applicant's arguments filed August 5, 2008 have been considered but are not persuasive.

ARGUMENT: "Wiser fails to teach or suggest effecting payment for the pre-studied downloaded content for the software application for enabling storing of the pre-studied downloaded content for the software application much less effecting payment for the pre-studied downloaded content for the software application for enabling storing of the pre-studied downloaded content for the software application without further user

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interaction beyond selecting the pre-studied downloaded content for storage, as provided in independent claims 1, 10 and 18. "(p. 8, l. 24 - p. 11, l. 14).

RESPONSE:

Applicant is referred to the rejection of claims 1, 10 and 18 in which this new limitation is addressed..

Conclusion

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SIEGFRIED E. CHENCINSKI whose telephone number is (571)272-6792. The examiner can normally be reached on 9AM - 6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle, can be reached on 571-272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SEC

March 16, 2009

/Narayanswamy Subramanian/
Primary Examiner, Art Unit 3695